

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

TIMOTHY CLAIR SHANNON,
Plaintiff,

vs.

OFFICER MICHAEL KOEHLER, in his
individual and official capacities; SIOUX
CITY POLICE DEPARTMENT; JOSEPH C.
FRISBIE individually and in his official
capacity.
Defendants.

CIVIL ACTION
No. C08-4059 MWB

PLAINTIFF'S FIRST MOTION IN
LIMINE TO BAR REFERENCE TO
CERTAIN FACTS NOT KNOWN
AT THE TIME OF PLAINTIFF'S
ARREST

COMES NOW the Plaintiff in the above-entitled case and moves the court in
Limine for an order instructing the Defendants to refrain absolutely from making any
direct or indirect reference whatsoever in person, by counsel, or through witnesses, to the
evidence hereinafter specified, on the following grounds:

1. The case is set for trial beginning January 11, 2010.
2. According to the complaint the trial will involve a determination of these basic
issues:

- a. Whether Officer Koehler was reasonable in his use of force against the
Plaintiff in accord with Plaintiff's rights under the 4th Amendment; and
- b. Whether the Chief Joseph Frisbie and the City have established,
authorized, or tolerated policies and practices that permit or encourage
excessive force violations of constitutional rights of the Plaintiff and
others like him.

3. The Plaintiff is informed, believes, and hence alleges that at said trial the
Defendants will attempt to introduce evidence, make reference to the fact, or otherwise
leave the jury with the impression that Officer Michael Koehler has special knowledge

that the Plaintiff and two witnesses, Christina Navrkal and Jill Murad were horse playing and Plaintiff swung his hand at, and possibly contacted, Navrkal.

4. It is immaterial and unnecessary to the disposition of the above referenced issues in this case and contrary to the law of 42 U.S.C. § 1983 and Fed. Rule Evid. 401 and 402 to permit such evidence or inference and would be highly prejudicial to the Plaintiff in the minds of the jury.

5. An ordinary objection during the course of trial, even if sustained with proper instructions to the jury, will not remove such effect because the jury will become confused about the issues of this case (whether Officer Koehler was reasonable in his use of force against the Plaintiff) and instead will focus on collateral immaterial concerns (whether Plaintiff is guilty of a prior assault Officer Koehler did not know about when he sought to investigate Plaintiff's need for an ambulance).

6. Pursuant to L.R. 7(1), the undersigned attempted to confer with counsel for the Defendants regarding this motion but opposing counsel was out of the office. Counsel for the Defendants does not consent to this motion.

WHEREFORE, Plaintiff prays this court to exercise its discretion and make an order absolutely prohibiting said offer or reference certain facts not known at the time of the Plaintiff's arrest.

BERENSTEIN, MOORE, HEFFERNAN,
MOELLER & JOHNSON, L.L.P.

By: /s/ Jason Gann

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2009, I
electronically filed the foregoing with the Clerk
of Court using the ECF system which will
send notification of such filing to the following:

Jeff W. Wright

By: /s/ Jason Gann